United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-2190

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UNIVERSAL PRODUCTIONS and
PUBLICATIONS, INC.,
Plaintiff-Appellee,

-vs-

Kenneth Malone,
Defendant-Appellant.

Docket No. 74 2190.

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Civil Action No. 1973-269

Docket No. 74 2190

Calendar No. 691

UNIVERSAL PRODUCTIONS and
PUBLICATIONS, INC.,

Plaintiff-Appellee,

vs.

KENNETH MALONE,

Defendant-Appellant.

BRIEF FOR PLAINTIFF-APPELLEE

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STATEMENT OF THE CASE

This is an action commenced by Universal Productions and Publications, Inc. to enjoin Kenneth Malone from conducting beauty and talent pageants for young girls in violation of the provisions of various contracts entered into between Universal and Malone, restraining Malone from unfair competition against Universal and restraining Malone from using trademarks, trade names and service marks of Universal. Trial was held in United States District Court for the Western District of New York before Hon. Harold P. Burke on January 15, 16 and 17, 1974. The Court's Findings of Fact and Conclusions of Law were filed on June 7, 1974 and on July 30, 1974 judgment thereon was filed enjoining Kenneth Malone from violations of the provisions of the contracts by affiliating with any similar pageant system for a period of three years in the geographic area covered by those contracts and permanently enjoining Malone from using, in conducting or promoting girls' pageants, names so similar as to cause a likelihood of confusion with Universal's pageants.

Since 1961 Universal Productions and Publications, Inc. and its predecessor, Young Artists, Inc., have conducted beauty and talent pageants for young girls ranging in age from three to seventeen. Universal's pageant system has three contests, "Miss LaPetite Pageant" for girls ages three through six, "Our Little

Miss Pageant" for girls ages seven through twelve, and "Ideal Miss Pageant" for girls thirteen through seventeen. Preliminary pageants are held on the local level and are usually sponsored by local civic organizations as fund-raising projects. The preliminary pageants are followed by a state pageant, which is followed by an international pageant.

Universal has conducted extensive advertising and promotional campaigns throughout the United States since 1962. The promotional activities include magazine advertisements, extensive mailings to potential participants and sponsors, video tapings and broadcasts of national contests, and on one occasion a nationally televised broadcast of its international contest (Tr. p. 44-51, Pl. ex. 18-21, answers to defendant's interrogatories No. 10). Universal has also made an agreement with a manufacturer of girls' dresses whereby the manufacturer was allowed to use the names "Our Little Miss" and "Miss LaPetite" in the promotion of its products (Tr. p. 147).

On March 23, 1971 Malone entered into a written agreement with Universal Productions and Publications, Inc. by which Malone was given the right to operate the "Our Little Miss Pageant" in Tompkins County, New York (Def. ex. 3). On October 19, 1971 Malone entered into eleven separate written agreements

whereby he was granted the exclusive right to stage state and local pageants in eleven states; New York, Connecticut, Massachusetts, New Jersey, Ohio, Pennsylvania, Vermont, Rhode Island, Maine, New Hampshire and Delaware (Pl. ex. 1-11). Each of those contracts contained the following provision:

> "Be it known that the state director shall under no circumstances be involved in any other children's pageants systems and that in the event said director is dismissed or voluntarily withdraws from the "Our Little Miss Pageant", he agrees to refrain from affiliating with any similar pageant for a period of five years."

Malone was given the title East Coast Director for Universal Pageant Systems and during the year 1972 conducted local and state contests pursuant to the written agreements. On December 21, 1972 Malone advised Universal that he was no longer conducting beauty pageants for Universal (Tr. p. 62).

Immediately upon terminating his relationship with Universal, Malone established his own system of beauty and talent pageants under the assumed name "International Pageant System" (Tr. p. 294). During the year 1973 Malone organized and promoted beauty and talent pageants in many states in the northeast and has continued, until enjoined by the Court below, to expand his pageants in an effort to establish a nationwide system in direct competition with Universal. Malone's Inter-

national Pageants System has three contests, "Miss Petite", "Little Miss", and "Miss Teen". Universal's participants and International's participants are both judged on beauty and talent (Tr. p. 131). The contests promoted by Malone's International Pageant System are substantially similar to Universal's pageants, although there is some variation in the judging criteria. During the year 1973 in the production of his pageant Malone also used the names "Little Miss - International" and "Miss Petite - International" in the promotion of his contests. These names as used by Malone in the promotion of his contests caused confusion among participants and potential participants of Universal's pageants (Tr. p. 8-10, 28, 38).

In the production of his 1973 New Jersey pageant Malone represented winners of Universal's 1972 New Jersey pageant as winners of Malone's International Pageant System (Tr. p. 25).

The trial Court found that the names used by Malone in promotion of his contests "Little Miss", "Miss Petite", "Little Miss - International" and "Miss Petite - International" are similar and confusingly so with the names used by Universal over a period of eleven years. The Court also found that Malone conducted pageants in direct competition with Universal in at least six of the states covered by the eleven written contracts.

The Court found that there was no substantial or meaningful distinction between the manner in which Malone conducted his pageants and the manner in which Universal conducted its pageants. The Court found, however, that the five year time limit contained in the written contract was unreasonable, and found that a three year time limit is reasonable. The Court found that the words "Little Miss" and "Miss LaPetite" have by Universal's use acquired a familiarity of association with Universal's pageants among participants, potential participants, sponsors, and potential sponsors. The Court found that Malone's use of the confusingly similar names "Little Miss" and "Miss Petite" in promoting his pageants is tantamount to misappropriating a valuable property right of Universal and constitutes unfair competition.

By judgment dated the 29th day of July, 1974 the trial Court enjoined Malone from affiliating in any manner with any pageant system similar to that of Universal for a period of three years in the states covered by the eleven contracts. The Court permanently enjoined Malone from using in conducting or promoting girls' pageants the names "Little Miss" and "Miss Petite" or any other names so similar as to cause likelihood of confusion with Universal's pageants.

POINT I.

UNIVERSAL PROVED, AND THE TRIAL COURT'S FINDING THAT THE AMOUNT IN CONTROVERSY EXCEEDS $10,000 IS CLEARLY SUPPORTED BY THE EVIDENCE.

Malone contends that Universal failed to prove that the Court had jurisdiction. Universal alleged in its complaint that the Court had jurisdiction pursuant to 28 USC §1332(a). Malone concedes that there is diversity of citizenship but contends that Universal failed to prove that the amount in controversy exceeds $10,000.00.

The trial Court found the amount in controversy exceeds the value of $10,000.00, exclusive of interest and costs:

> "The value of the rights which plaintiff seeks to protect, and the damages and potential damages to plaintiff, resulting from defendant's breach of eleven contracts and his conduct constituting unfair competition, exceeds the value of $10,000.00, exclusive of interest and costs. Plaintiff's damage already sustained by lost sanction fees, lost entry fees, and other lost income, all caused by defendant's illegal conduct, exceeds the value of $10,000.00, exclusive of interest and costs."

The Court concluded:

> "This Court has jurisdiction of this case under 28 U.S.C. Section 1332, there being diversity of citizenship between the parties and the amount in controversy exceeding $10,000.00, exclusive of interest and costs."

In an action seeking to enjoin unfair competition the amount in controversy has been held to be the value of the right

to be protected or the value to the complainant of the business or the good will to be protected. Seaboard Finance Co. v. Martin, 244 F.2d 329 (5 Cir. 1957); I Moore's Federal Practice, Para. 0.96 (2) p.871. There is ample evidence in the record to support the Court's finding that the value of the rights which Universal seeks to protect and the damage and potential damage to Universal for Malone's acts exceeds the value of $10,000.00 exclusive of interest and costs.

The rights which Universal seeks to protect in this action are its good will and its right to continue production of beauty and talent pageants without unfair competition by Malone. There is ample evidence that the value of Universal's good will is in excess of $10,000.00. Universal's president, Carl D. Dunn, testified concerning the efforts of Universal to promote its names and pageants (Tr. p. 44-53; Pl. ex. 18, 19, 20, 21; answers to defendant's interrogatories No. 10). Universal's tax returns, made a part of the record in answer to defendant's interrogatories, show the amount of money expended in promotion of Universal's names. Universal spent $143,000.00 in television promotion alone from 1967 to 1972 (answer to defendant's interrogatories No. 10).

The damages incurred by Universal and the potential damages resulting from Malone's breach of eleven contracts and his conduct constituting unfair competition also exceed the value of $10,000.00, exclusive of costs and interest. Each of the eleven contracts entered into by Malone with Universal provide that Malone will pay Universal an advance sanction fee ranging from $835.00 to $135.00 for each of the eleven states, entrance fees to the international contest of $175.00 for at least two winners and 15% of gross entry fees received from the state pageants (Pl. ex. 1-11). The total advance sanction fees for these eleven states for the year 1972 was $4,635.00. Entry fees of two winners from each of the eleven states would amount to a total of $3,850.00. Malone stated that there were 370 contestants in the state pageants in the year 1972 (answers to interrogatories propounded by plaintiff No. 5). The entry fee is $50.00. Malone agreed to pay Universal 15% of the total revenue from entry fees to the state contests, a total of $2,775.00.

The evidence clearly supports the trial judge's findings that the damage to plaintiff exceeds $10,000.00 for one year. The matter in controversy also includes the potential damages to be suffered by Universal, had Malone not been enjoined. In addition, Universal was unable to conduct pageants in the states

of Ohio and New Jersey in 1973 because of the breach of eleven contracts and unfair competition of Malone (Tr. p. 72). Witnesses June DeVault and Dorothy Tronocone testified concerning the confusion caused by Malone's activity in these states (Tr. p. 8-10, 28). The loss of revenues to Universal in these states alone during the period covered by the agreement not to compete would exceed $10,000.00 (Pl. ex. 1-11).

Malone relies on the case of Seagram-Distillers Corp. v. New Cut Rate Liquors, 245 F.2d 453 (7th Cir. 1957) for the proposition that plaintiff must prove that the alleged injury or damage caused by the defendant's act must be in the amount of $10,000.00. Universal, of course, contends that it has demonstrated that the damage or injury is in excess of $10,000.00 but would distinguish the Seagram case from the present case. Seagram sought an injunction restraining the defendant from selling Seagram's product at less than the price as stipulated by plaintiff under the Illinois Fair Trade Act. Seagram established that it had spent large sums of money in establishing its good will in Illinois but it could not show that its good will was damaged by the sale of its product at less than the fair trade price. Universal has, however, clearly demonstrated that it has suffered damages in excess of $10,000.00 by Malone's actions. The Court in Seagram distinguishes two classes of cases. The

first class in which the Seagram case falls is where the plaintiff charges wrongful acts by a defendant which will injure or damage a right for which plaintiff seeks protection. In such a case plaintiff must show that the alleged injury or damage caused or threatened by the defendant amounts to at least $10,000.00. In another class of cases the plaintiff charges wrongful acts by the defendant which, if not prevented, will completely destroy a right for which plaintiff seeks protection. In such a case the plaintiff must show that the right is worth at least $10,000.00. Universal contends that the testimony at trial established that Malone is in the process of destroying Universal's rights and its name and service mark in the northeast states and, therefore, the amounts that Universal has invested in its names and service marks are relevant. Seagram-Distillers Corp. v. New Cut Rate Liquors, Supra. 245 F.2d at 255.

Malone contends that he has spent in excess of $83,000.00 in promotion and advertising of his contests during his first nine month period of operation (answers to plaintiff's interrogatories No. 12). In an early Supreme Court case the Court held that in a suit to abate a public nuisance the value of the object must govern. Mississippi and M. R. Co. v. Ward, 2 Black 485, 492 (1862). The value of the object which Universal seeks to

have enjoined is by Malone's own calculations worth in excess of $83,000.00.

Universal contends that it has clearly established that the amount in controversy exceeds the value of $10,000.00, exclusive of interest and cost and that diversity of citizenship exists. The trial judge's Finding of Fact and Conclusion of Law to that effect are clearly supported by the evidence.

POINT II.

THE PROVISION IN ELEVEN CONTRACTS WHEREBY MALONE AGREED NOT TO BE AFFILIATED WITH ANY SIMILAR PAGEANT SYSTEM IS REASONABLE AND ENFORCEABLE UNDER NEW YORK LAW TO THE EXTENT FOUND BY THE TRIAL COURT.

An agreement by an employee or business associate not to compete with his employer or former business associate after they have severed their business relationship is enforceable under New York Law to the extent that it is reasonable and to the extent necessary to protect the legitimate interest of the aggrieved party. Each case must, of course, depend to a great extent upon its own facts and even if an agreement is overbrought and unreasonable in part, the provisions will be enforced to the extent that it is reasonable. Karpinski v. Ingrasci, 28 N.Y. 2d 45 (1971). "Employers should be afforded reasonable protection from the pirating of their business by disloyal

employees who agreed by contract to refrain from such unfair activities." Service Systems Corp. v. Harris, 41 A.D. 2d 20 (4th Dept. 1973).

The relationship between the party seeking an injunction and the party sought to be restrained is an important factor in determining whether a covenant not to compete is reasonable. Restrictive covenants in connection with business deals are distinguished from contracts of employment. Melodies, Inc. v. Carmulo Miraible, 7 A.D. 2d 783 (3d Dept. 1958). Malone entered into eleven separate contracts whereby he was granted the right to conduct pageants on behalf of Universal. In return, Universal was to receive certain fees for each contest held depending on the nature and level of the contest. Malone also agreed to conduct a certain number of local pageants in each state in order to insure that a legitimate state pageant would be held. Malone was given the title East Coast Director of Universal Pageant System and his financial success depended on his ability to promote pageants throughout the various states. In return for the exclusive right to stage pageants on behalf of the plaintiff in these eleven states, Malone agreed not to be affiliated with any similar pageant system for a period of five years. Universal contends that the restrictive covenant should be judged in light of Malone's status as an independent promoter

with exclusive rights to promote Universal's contests in the various states and that Malone should not be considered simply an employee. Universal contends, however, that even if Malone were considered an employee, the restrictive covenant is reasonable under the circumstances.

In judging the reasonableness of restrictive covenants concerning employees five factors are considered by the New York Courts: (1) The restriction must be necessary for the employer's protection; (2) The time must be reasonable; (3) The geographic area must be reasonable; (4) The burden on the employee must not be unreasonable; and (5) The general public must not be harmed. Service Systems Corp. v. Harris, 41 A.D. 2d 20 (4th Dept. 1973).

The restrictive covenant is clearly necessary for Universal Pageant System's protection. As East Coast Director Kenneth Malone represented Universal Pageant System throughout the eleven states. He personally conducted the pageants and made the personal contacts with sponsors and participants in his pageants. Following Malone's termination of his association with Universal and his establishment of his own pageant system state directors were unable to stage pageants in the states of New Jersey and Ohio. Malone was not simply a mere salesman but he alone had information concerning promotion of these

pageants in the various states. Malone had a unique opportunity as Universal's East Coast Director. He alone in the Universal Pageant System had contact with the local clubs and civic organizations that promote local pageants. He alone made contact with facilities used for production of pageants. He alone had the opportunity to capitalize on the promotional efforts expended by Universal.

Malone contends that in the absence of proof of the unique character of the employee's services, betrayal of confidential information or trade secrets, or the pirating of customers, a covenant not to compete is void under New York Law. Universal does not agree, and contends that under the New York Court of Appeals decision in Karpinski v. Ingrasci, supra 28 N.Y. 2d 45 (1971) an agreement not to compete will be enforced to the extent it is found to be reasonable. In any event, Universal contends that it has clearly established at trial that Malone's services were unique as interpreted by the New York Courts and that Malone engaged in unfair competition in pirating Universal's "customers".

In Service Systems Corp. v. Harris, supra 41 A.D. 2d 20, the former employee sought to be enjoined from competition had been a regional director of a building maintenance service.

The Court held that Harris' duties as manager and his relationship with customers made his services unique or extraordinary. "An employer has sufficient interest in retaining present customers to support an employee covenant where the employer's relationship with the customers is such that there is a substantial risk the employee may be able to divert all or part of the business." Service Systems v. Harris, supra 41 A.D. 2d at 23-24.

Universal contends that Malone's services were unique or extraordinary as interpreted by the Court in Service Systems Corp. v. Harris. Only Malone had personal contact with participants and sponsors until the International pageant. Evidence at trial clearly established that Malone was successful in pirating participants of Universal's pageants.

Universal contends that the duration of the injunctive relief granted by the trial Court is reasonable in light of the annual nature of the children's pageant business. Universal sought and the Court granted injunctive relief based on the contracts limited to the geographic areas specifically covered by the contracts (Pl. ex. 1-11). The injunction granted would not restrain Malone from engaging in the types of business he was involved in prior to his association with Universal. He

would still be able to conduct dance contests or give dance or talent lessons of his choice. If Malone stands to suffer damages as a result of an injunction, these damages will arise out of his business activities in competition with Universal Pageant System and in violation of his contracts. There is no evidence that the general public would be harmed by the enforcement of the covenant as sought by Universal.

The method, technique and know-how of the business has been developed by Universal Pageant System through considerable investment of time, effort and money. Universal Pageant System's success or failure in the eleven states covered by the contracts depended upon the discharge of the duties and responsibilities agreed to by Malone. These circumstances must be distinguished from covenants involving an employee who has little contact with customers and has a small part in the success or failure of the business. Service Systems Corp. v. Harris, supra 41 A.D. 2d at 20, 24. Universal contends that the injunctive relief granted is reasonable in duration and territorial scope in light of the nature of Malone's position and his ability to inflict substantial harm on Universal as demonstrated by Universal's unsuccessful efforts in New Jersey and Ohio. The contractual provision is reasonable and enforceable under New York Law. H. B. Fuller Company v. Hagen, 363 F. Supp. 1325 (W.D.N.Y. 1973).

Universal has established that Malone entered into eleven contracts, each of which contained a provision whereby Malone agreed not to be affiliated with any similar pageant system for a period of five years, and that Malone was, until enjoined by the trial Court, affiliated with pageant systems in direct competition with Universal. The trial Court found that a three year period of duration was reasonable. The trial Court was clearly correct in enjoining Malone from affiliating with any pageant system similar to Universal's for a period of three years in the eleven states covered by the contracts.

POINT III.

THE WORDS "LITLE MISS" AND "MISS LA PETITE" HAVE, THROUGH UNIVERSAL'S USE, ACQUIRED A FAMILIARITY OF ASSOCIATION WITH UNIVERSAL'S PAGEANTS AMONG PARTICIPANTS AND SPONSORS AND MALONE'S USE OF CONFUSINGLY SIMILAR NAMES CONSTITUTES UNFAIR COMPETITION.

Under New York Law Universal is entitled to injunctive relief if its names "Our Little Miss" and "Miss LaPetite" have acquired secondary meaning and Malone's names and business activity are confusingly similar to those of Universal, or if Malone's business activity constitutes palming off, actual deception and an appropriation of Universal's property rights acquired through promotional activities. Flexitized, Inc. v.

National Flexitized Corporation, 335 F. 2d 774 (2d Cir. 1964, cert. denied, 380 U.S. 913 1965), J. Josephson, Inc. v. General Tire and Rubber Co., 357 F. Supp. 1047 (S.D.N.Y. 1972).

The trial Court found:

> "15. The use of the words "Little Miss" and "Miss LaPetite" have, by plaintiff's use, acquired a familiarity of association with plaintiff's pageants among participants, potential participants, sponsors, and potential sponsors. The defendant's use of the names "Little Miss" and "Miss Petite", a confusingly similar name, in promoting his pageants, is tantamount to misappropriating a valuable property right of the plaintiff and constitutes unfair competition with the plaintiff."

The trial Court, in its Conclusion of Law, stated:

> "3. Plaintiff acquired a valid property right in the use of the names "Little Miss" and "Miss LaPetite" through its use of those names in promoting its pageants. Those names have acquired a familiarity of association with plaintiff's pageants among participants, potential participants, sponsors, and potential sponsors, so as to cause those classes of persons to believe that the use of those names in connection with girls' pageants means plaintiff's pageants. The use by defendant of the names "Little Miss" and "Miss Petite" in connection with his pageants constitutes unfair competition. Plaintiff is entitled to permanent injunction restraining defendant from using the names "Miss Petite" and "Little Miss" or any other names so similar as to cause likelihood of confusion, in conducting or promoting defendant's pageants."

Universal contends that the trial Court's conclusion that Universal has acquired a valid property right in the use of the names "Little Miss" and "Miss LaPetite" is clearly supported

by the record, that the names used by Malone in promotion of his pageants are confusingly similar, that Malone engaged in "palming off" his pageants as those of Universal, that he engaged in actual deception, and therefore the trial Court was clearly correct in granting injunctive relief.

The trial Court found that the names "Little Miss" and "Miss LaPetite" have, by Universal's use, acquired a familiarity of association with Universal's pageants among participants, potential participants, sponsors and potential sponsors. Universal contends that the record clearly establishes that the names "Little Miss" and "Miss LaPetite" have, through continual promotion and use by Universal acquired secondary meaning. "Secondary meaning" refers to the association formed in the mind of the consumer which links an individual product with its manufacturer or distributor. J. Josephson, Inc. v. General Tire and Rubber Co., supra 357 F. Supp. at 1048.

It is, of course, impossible to establish the state of mind of the public. Universal contends, however, that in light of its continuous national promotional efforts it is more likely than not that the public has given the names "Our Little Miss" and "Miss LaPetite" a secondary meaning. See W. E. Bassett Company v. Revlon, Inc., 435 F. 2d 656 (2d Cir. 1970). The

record is replete with evidence of promotional efforts of Universal. Universal president Carl D. Dunn testified concerning Universal's direct mailing efforts to that part of the public interested in children's pageants. Dunn testified that Universal undertook television broadcast of its International pageant as part of its promotional efforts (Tr. p. 44-53). Universal undertook extensive promotional efforts in the northeast in an effort to assist the work it thought would be undertaken by Malone pursuant to eleven contracts. Plaintiff's exhibits 18, 19, 20 and 21 contain a voluminous record of the use of Universal's names by independent sources, primarily the news media. Marge Hannaman, Universal's secretary-treasurer, testified that Universal had entered into an agreement with a manufacturer of girls' dresses allowing that manufacturer to use Universal's names "Our Little Miss" and "Miss LaPetite" in the promotion of its products (Tr. p. 147). Universal contends that the evidence of extensive promotion of its names throughout the United States since 1962 is sufficient to establish that Universal's names "Little Miss" and "Miss LaPetite" have acquired secondary meaning. See: Miss Universe, Inc. v. Patricelli, 408 F. 2d 506 (2d Cir. 1969). In addition, Universal produced witnesses from Oklahoma, New Jersey and Ohio who testified that Universal's names have acquired a familiarity of association

with Universal's pageants in their areas (Tr. pp. 8-10, 28, 38).

Malone's contention that his names are not confusingly similar is frivolous. Universal contends that Malone's actions are a blatant effort to palm off his pageants as those of Universal. A comparison of the names adopted by Malone immediately upon his termination of his relationship with Universal speaks for itself.

Universal	Malone
Universal Pageant System	International Pageant System
Contests	
Miss LaPetite	Miss Petite
Our Little Miss	Little Miss
Ideal Miss	Miss Teen

Malone contended at trial that his pageants were talent pageants while Universal's were beauty pageants. The record clearly established that there is no meaningful distinction in the manner in which Malone conducted his pageants and Universal conducted its pageants. Malone's own printed material rebutted his contention that his pageants were judged on "talent, not beauty" (Pl. ex. 29, Tr. p. 276-278). In addition, Malone represented former winners of Universal's pageants as winners of Malone's pageants (Tr. p. 25), which Universal contends is evidence of actual deception.

It is not necessary for Universal to establish that a secondary meaning has been created in its names in order to be entitled to injunctive relief for unfair competition. Universal has also established that Malone's business activity constituted palming off, actual deception, and an appropriation of plaintiff's property rights acquired through its promotional activities. Under New York Law of unfair competition, Universal is entitled to injunctive relief on these grounds. Flexitized, Inc. v. National Flexitized Corporation, 335 F. 2d 774 (2d Cir. 1964). J. Josephson, Inc. v. General Tire and Rubber Co., supra 357 F. Supp. 1047. Universal contends that the evidence clearly established that Malone has attempted to appropriate the results of the skills and labors of Universal in promoting his contests. The law of unfair competition has grown to protect legitimate businesses from such "parasitism" as practiced by Malone. Electrolux Corp. v. Valu-Worth, Inc., 6 N.Y. 2d 556 (1959).

Universal contends that the evidence clearly establishes that its names have acquired a secondary meaning and Malone is using confusingly similar names and that Malone has attempted to misappropriate the results of the skill and labor of Universal for his own personal commercial advantage. The trial Court was clearly correct in granting an injunction barring Malone from this unfair competition.

CONCLUSION.

Universal Productions and Publications, Inc. respectfully submits that Judgment of the District Court should be affirmed.

Respectfully submitted,

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